IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 838 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT MUNICIPAL CORPORATION - Appellant(s)
Versus
BAI RUDIBEN WD/O MANDHA HIRA & 4 - Defendant(s)

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Appearance :

MR AS ASTHAVADI for MR PRASHANT G DESAI for Appellant(s) : 1,
MR AMRISH PANDYA FOR MR DR BHATT for Respondents : 1 - 3.
None for Respondent : 4,
MR RITURAJ MEENA for MR YN RAVANI for Respondent : 5,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/06/2007

ORAL JUDGMENT

Shri A.S. Asthavadi, learned counsel under the

authority of Shri Prashant G. Desai for the appellant; Shri Amrish Pandya, learned counsel under the authority of Shri D.R. Bhatt for the respondents no. 1 to 3; none for the respondent no.4 though served; Shri Rituraj Meena, learned counsel under the authority of Shri Y.N. Ravani for the respondent no.5.

2. The appellant-Municipal Corporation of Surat, being aggrieved by the award passed by the M.A.C. Tribunal, Valsad at Navsari in M.A.C. Petition No. 206/83 on 6th February, 1986 is before this Court with the submission that the Tribunal was unjustified in exonerating the Insurance Company.

3. As the accident and the death have not been challenged, this Court is not required to narrate other details except the facts necessary for disposal of the appeal.

4. Truck No. GTT 4505 belonged to Surat Municipal Corporation. The truck was returning from Atul Industrial Complex loading cylinders of chlorine gas which was driven by Kanjibhai Hamirbhai Vaghela. When it came over a river,

the driver lost control over the vehicle and the vehicle landed in a ditch. Madha Hira, husband of the respondent no.1 and father of respondents no. 2 to 4, suffered injuries and died on the spot. The respondents no. 1 to 3 filed the Claim Petition. Undisputedly, the vehicle was insured with New India Assurance Company. It was agreed between the insured and the insurer that the company had undertaken to cover the risk of paid driver and cleaner. Undisputely, the deceased was not paid driver. He was otherwise an employee of the Corporation. The defence of the present appellant was that as per the practice followed by the Corporation, whenever truck of the Corporation was to remain out for eight hours or more, the truck was to carry two drivers to meet the exigencies. When the Corporation was confronted with the fact that on the date of the accident, the deceased was on leave, it was sought to be contended that though he was on leave, but under the instructions of some Municipal Inspector, driver had called the deceased from his house. The Inspector, who had

passed such instructions to the driver has not been examined. No circular, rule or directions have been brought on the records to show or suggest that whenever truck remained out for eight hours or more, two drivers had to accompany the truck. In absence of the statement of the Municipal Inspector, the statement of the driver cannot be relied upon. The Corporation was obliged to prove before the Court that they had issued certain authority in favour of the Inspector to ask the driver or anybody else to call for the driver even if he was on leave or call the employee if he was on leave, to come as driver of the truck.

5. It appears that the Corporation was trying to concoct and manufacture some defence. Defence was absolutely hollow and was as bogus as driving of the driver which led to the accident. As the liability of a passenger or employee carried in the truck was not covered by the Insurance Company, the Tribunal was justified in exonerating the Insurance Company.

6. I find no reason to interfere. The appeal is

accordingly dismissed. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-